SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

03/13/2000

CLERK OF THE COURT
Form V000

HON. SUSAN R. BOLTON

P. Woods
Deputy

CV99-013055

FILED: MAR 14 2000

TRICITY BEHAVIORAL HEALTH SERVICES INC

JEFFREY C. BRODIN
JENNIFER A. SPARKS

v.

COMCARE, INC., ET AL

DON D. SKYPECK
JAMES R. TAYLOR

LOGAN T. JOHNSTON
1 N. FIRST ST SUITE 700
PHOENIX AZ 85004

MINUTE ENTRY

On December 21, 1999, the Court issued its minute entry in this matter wherein it agreed with the decision by the AHCCCS Director that AHCCCS is responsible for covering the co-insurance and deductible amounts for dual eligible Qualified Medicare Beneficiaries (QMBs) for services rendered covered my Medicare but not AHCCCS. The State Plan for Arizona explicitly provides that AHCCCS will pay

the full Medicare deductible and co-insurance amounts for Medicare covered services for those individuals who are both Medicare and AHCCCS qualified. The Court also agreed with the Director that the contract between AHCCCS and the Arizona Department of Health Services (ADHS) requires ADHS to be responsible for these co-insurance and deductible amounts. This conclusion was based on a portion of that contract quoted in the December 30, 1998 letter to Tricity from Branch McNeal of AHCCCS. AHCCCS has now provided to this Court evidence that this specific contractual language is found in the October 1, 1997 revisions to the contract between AHCCCS and ADHS. This Court found that AHCCCS was responsible for the co-insurance and deductible amounts sought by Tricity and that the ADHS contract with AHCCCS shifts that responsibility to ADHS. What the Court found lacking in the administrative record was any evidence that ADHS had shifted that responsibility to Comcare. The Court requested that the parties submit the

contract and also supplemental briefing directed to this specific issue.

The Court has now reviewed the Comcare contract with ADHS, certain AHCCCS statutes and statutes related to the relationship between ADHS and Regional Behavioral Health Authorities along with applicable administrative regulations. The Court concluded that there is no substantial evidence to support the finding of the AHCCCS Director when she concluded, "This (the responsibility for a co-insurance and deductibles) appears to have been included as part of AHCCCS contract with the Arizona Department of Health Services ("ADHS") and its subcontractors regarding the provision of mental health services." (Emphasis added.) See Director's Decision, Paragraph #7.

The standard of review is for this Court to determine from all the evidence whether the administrative decision is supported by substantial evidence. In the recent Arizona Court of Appeals decision, Schaffer v. Arizona State Liquor

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Board, 1CA-CV99-0332 Filed 2-29-00, the Court concluded that the addition of A.R.S. Section 12-910 which allows new or additional evidence to be submitted in an appeal from an administrative decision, does not permit the Court to reweigh the evidence or re-fin the facts. The standard of review is still to determine whether the administrative decision is supported by substantial evidence.

The only evidence in the administrative record that appeared to support the agency's decision was the contract language quoted in the December 30, 1998 letter from Branch McNeal of AHCCCS. As the Court noted that language was written in the disjunctive but the administrative agency's conclusion was written in the conjunctive. Having solicited additional evidence and having reviewed that evidence, the Court can find no support in the evidence for the conclusion that the responsibility for co-insurance and deductibles for Medicare covered services for dual eligible QMBs, which services are not AHCCCS covered services, was included in the ADHS contract with ComCare.

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The Court agrees that the October 1, 1997 language provided by AHCCCS and previously quoted in Branch McNeal's December 30, 1998 letter shows that AHCCCS contacted with ADHS to pay Medicare co-payments and deductibles but left it to ADHS whether to do this itself or by contract through the RHBA's including Comcare.

The Court agrees with Comcare that its contracts with ADHS pre-existed this 1997 language and nowhere in those contracts are there any requirements on Comcare to pay for anything other than AHCCCS covered services. If ADHS had intended to contract with its RHBA, Comcare, to also administer Medicare co-insurance and deductibles for non-AHCCCS covered services for dual eligible QMBs, it would have had to amend its contract with Comcare after the October 1, 1997 contract revisions between AHCCCS and ADHS. The language quoted from the 1995 and 1996 contracts between AHCCCS and ADHS, even if they couldbe considered incorporated in the Comcare-ADHS contract, do not address Medicare co-insurance and deductibles for Medicare services not also covered by AHCCCS. Specifically the 1995 language relating to co-insurance and

deductibles refers to only AHCCCS covered behavioral health services. The 1996 contract requires only that ADHS subcontractor related to the coordination of benefits and the determination of third-party liability. The ADHS contract with Comcare did not contain any such specific duties related to the co-insurance and deductibles at issue in this case.

The Court having found that there is no substantial evidence in the record to support the Director's conclusion that either AHCCCS or ADHS had delegated its obligations for co-insurance and deductibles for Medicare covered services for dual eligible QMBs to Comcare by contract, the Court need not reach the questions concerning Comcare's right to audit or Tricity's appeal of the Director's conclusions on the limitation on claims.

IT IS THEREFORE ORDERED reversing the Director's Decision finding Comcare liable to Tricity for the Medicare co-insurance and deductibles.

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When the Court asked for additional briefing related only to the question of whether Comcare assumed the contractual responsibility for the payments at issue in this case, Tricity responded with a memorandum devoted in large part to a request that this Court order AHCCCS to pay the co-insurance and deductibles if Comcare was found not responsible. AHCCCS responded with a motion to dismiss.

As a procedural matter, this Court cannot enter an order against AHCCCS for the payment of any specific amount at issue in this case and in that regard the motion to dismiss is granted. A.R.S. Section 12-910E specifies that "the Court may affirm, reverse, modify or vacate and remand the agency action." Modification cannot include changing a grievance against Comcare into a judgment against AHCCCS.

The Court finds AHCCCS position in the motion to dismiss to be somewhat disingenuous. AHCCCS has concluded that it is responsible for these co-insurance and deductibles and that the responsibility had been delegated to ADHS. TriCity is clearly the innocent party in this

bureaucratic dispute among Medicare administrators, AHCCCS administrators, ADHS and Comcare. Having acknowledged that AHCCCS is required by its State plan to cover these expenses and having acknowledged that ADHS has assumed the contractual responsibility from AHCCCS for these co-insurance and deductibles, the only equitable response would be for AHCCCS to attempt to resolve these claims with Tricity rather than to erect procedural hurdles for Tricity to now overcome, particularly when it was AHCCCS that directed Tricity to submit its claims to Comcare in the first instance.